

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

December 20, 2002

IN RE:

**PETITION OF 360 NETWORKS (USA) INC. FOR
APPROVAL OF AN INDIRECT CHANGE OF CONTROL**

**DOCKET NO.
02-01178**

ORDER APPROVING TRANSFER OF AUTHORITY

This matter came before Chairman Sara Kyle, Director Pat Miller, and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at the regularly scheduled Authority Conference held on November 18, 2002 for consideration of the *Petition* (the "*Petition*") filed by 360networks (USA) inc. ("360 USA") for approval of an indirect change of control of 360 USA. The *Petition* was considered pursuant to the provisions of Tenn. Code Ann. § 65-4-113, which requires Authority approval of a transfer of authority to provide utility services.

Requirement of and Standards for Authority Approval

Tenn. Code Ann. § 65-4-113 requires a public utility to obtain Authority approval to transfer its authority to provide utility services. Tenn. Code Ann. § 65-4-113(a) provides as follows:

- (a) No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority.

Tenn. Code Ann. § 65-4-113(b) provides the standards by which the Authority shall consider an application for transfer of authority, in pertinent part, as follows:

(b) Upon petition for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. . . .

The Petition

In the *Petition*, which was filed on October 24, 2002, 360 USA requests Authority approval of an indirect transfer of control of 360 USA from its current ultimate parent, 360networks inc. ("360networks"), to a group of shareholders that includes senior lenders, unsecured creditors, employees, and directors. The *Petition* states that this transfer of control is taking place in connection with the reorganization of 360 USA, its parent, and its affiliates, undertaken pursuant to orders of the Supreme Court of British Columbia, Canada, and of the United States Bankruptcy Court for the Southern District of New York.

According to the *Petition*, 360 USA is a Nevada corporation with its principal place of business located in Broomfield, Colorado. 360 USA is a wholly-owned subsidiary of 360networks holdings (USA) inc., which is a majority-owned subsidiary of 360networks Corporation ("360 Corp."), a Canadian corporation. 360 Corp. is a wholly-owned subsidiary of 360networks, a Canada corporation. Under its prior name Worldwide Fiber Networks, Inc., 360 USA was granted authority to provide facilities-based interexchange telecommunications services in Tennessee by Order dated December 3, 1999 in Docket No. 99-00556. 360 USA was granted authority to provide facilities-based competing local exchange and interexchange telecommunications services by Order dated February 22, 2000 in Docket No. 00-00860.

The *Petition* states that on June 28, 2001, 360networks and certain of its subsidiaries commenced bankruptcy proceedings in the Supreme Court of British Columbia, Canada and in the United States Bankruptcy Court for the Southern District of New York. The *Petition* further states that both courts have approved a reorganization plan that will remove 360networks as the ultimate owner of 360 USA and replace it with a group of shareholders that includes senior lenders, unsecured creditors, employees, and directors.¹ The *Petition* states that 360networks is currently owned by a number of minority shareholders, the largest of which are two (2) subsidiaries of Ledcor Holdings, Inc. ("Ledcor"). Upon implementation of the reorganization plan, neither Ledcor nor any of its subsidiaries will hold shares in 360Corp.

Public Interest Considerations

According to the *Petition*, the proposed transaction is in the public interest because it will enhance competition in Tennessee by strengthening the financial and competitive position of 360 USA, enabling it to emerge from its current bankruptcy status as a stronger and more viable competitor. The *Petition* further states that the proposed change of control is not expected to affect the day-to-day operations of 360 USA and will be completely transparent to 360 USA's Tennessee customers. Finally, according to the *Petition*, the proposed transaction will not negatively affect competition in the Tennessee telecommunications market.

Findings

The Authority considered this matter at the November 18, 2002 Authority Conference. Based upon careful consideration of the *Petition* and of the entire record of this matter, the Authority finds and concludes as follows:

¹ According to the *Petition*, the senior lenders consist of approximately sixty (60) unaffiliated institutions. Pursuant to the reorganization plan, these senior lenders will receive approximately 80.5% of the total outstanding shares of 360Corp.

1. The Authority has jurisdiction over the subject matter of this *Petition* pursuant to Tenn. Code Ann. § 65-4-113;

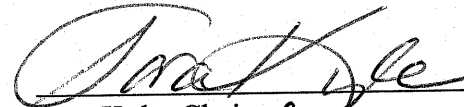
2. 360networks (USA) inc. has been granted authority to provide telecommunications services in Tennessee;

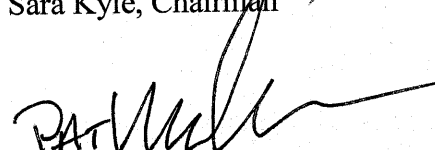
3. Ownership of the ultimate parent company of 360networks (USA) inc. will be transferred to a group of shareholders including senior lenders, unsecured creditors, employees, and directors, resulting in a transfer of the authority granted 360networks (USA) inc. to provide utility services; and

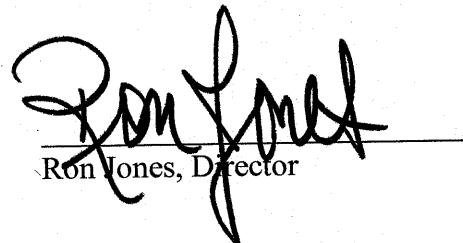
4. The transfer of authority will benefit the consuming public.

IT IS THEREFORE ORDERED THAT:

The *Petition* of 360 networks (USA) inc. for approval of the transfer of authority described herein is approved.


Sara Kyle, Chairman


Pat Miller, Director


Ron Jones, Director